

E. No access to financial records shall be attempted before the expiration of the pertinent time period while awaiting receipt of a potential customer challenge, or prior to the adjudication of any challenge made.

F. The official who signs the customer notice shall be designated to receive any challenge from the customer.

G. When a customer fails to file a challenge to access to financial records within the above pertinent time periods, or after a challenge is adjudicated in favor of the law enforcement office, the head of the office, or a designee, shall certify in writing to the financial institution that such office has complied with the requirements of 12 U.S.C. Chapter 35. No access to any financial records shall be made before such certification (Appendix M to this part) is provided the financial institution.

#### APPENDIX D TO PART 275—OBTAINING ACCESS BY SEARCH WARRANT

A. A Government authority may obtain financial records by using a search warrant obtained under Rule 41 of the Federal Rules of Criminal Procedure.

B. Unless a delay of notice has been obtained under provisions of Appendix H to this part, the law enforcement office shall, no later than 90 days after serving the search warrant, mail to the customer's last known address a copy of the search warrant together with the following notice:

“Records or information concerning your transactions held by the financial institution named in the attached search warrant were obtained by this [DoD office or activity] on [date] for the following purpose: [state purpose]. You may have rights under the Right to Financial Privacy Act of 1978.”

C. In any state or territory of the United States, or in the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands, search authorizations signed by installation commanders, military judges, or magistrates shall not be used to gain access to financial records.

#### APPENDIX E TO PART 275—OBTAINING ACCESS FOR FOREIGN INTELLIGENCE, FOREIGN COUNTERINTELLIGENCE, AND INTERNATIONAL TERRORIST ACTIVITIES OR INVESTIGATIONS

A. Financial records may be obtained from a financial institution (as identified at §275.3) by an intelligence organization, as identified in DoD Directive 5240.1<sup>1</sup>, authorized to conduct intelligence activities, to include investigation or analyses related to

international terrorism, pursuant to DoD Directive 5240.1 and Executive Order 12333.

B. The provisions of this part do not apply to the production and disclosure of financial records when requests are submitted by intelligence organizations except as may be required by this Appendix.

C. When a request for financial records is made under paragraph A. of this appendix, a Component official designated by the Secretary of Defense, the Secretary of a Military Department, or the Head of the DoD Component authorized to conduct foreign intelligence or foreign counterintelligence activities shall certify to the financial institution that the requesting Component has complied with the provisions of U.S.C. chapter 35. Such certification in a format similar to Appendix M to this part shall be made before obtaining any records.

D. An intelligence organization requesting financial records under paragraph A. of this appendix, may notify the financial institution from which records are sought 12 U.S.C. 3414(3) prohibits disclosure to any person by the institution, its agents, or employees that financial records have been sought or obtained. An intelligence organization requesting financial records under paragraph A. of this appendix, shall maintain an annual tabulation of the occasions in

E. An intelligence organization requesting financial records under paragraph A. of this appendix, shall maintain an annual tabulation of the occasions in which this access procedure was used.

#### APPENDIX F TO PART 275—OBTAINING EMERGENCY ACCESS

A. Except as provided in paragraphs B. and C. of this appendix, nothing in this part shall apply to a request for financial records from a financial institution when a determination is made that a delay in obtaining access to such records would create an imminent danger of:

1. Physical injury to any person.
2. Serious property damage.
3. Flight to avoid prosecution.

B. When access is made to financial records under paragraph A of this appendix, a Component official designated by the Secretary of Defense or the Secretary of a Military Department shall:

1. Certify in writing, in a format set forth in Appendix M to this part, to the financial institution that the Component has complied with the provisions of 12 U.S.C. chapter 35, as a prerequisite to obtaining access.

2. Submit for filing with the appropriate court a signed sworn statement setting forth the grounds for the emergency access within 5 days of obtaining access to financial records.

C. When access to financial records are obtained under paragraph A. of this appendix, a

<sup>1</sup>Copies may be obtained at <http://www.dtic.mil/whs/directives/>.